

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GOOGLE INC., a Delaware
Corporation,

Plaintiff,

v.

RICHARD WOLFE, an individual
doing business as Froogles.Com,

Defendant.

Docket No. 05-CV-01779-TCP-ETB

Central Islip, New York

April 6, 2006

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE E. THOMAS BOYLE
UNITED STATES DISTRICT JUDGE

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I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

None

E X H I B I T S

COURT

DESCRIPTION

MARKED

RECEIVED

No Documents

Google Inc. v. Richard Wolfe

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1 THE COURT: Calling CV 05-1779 Google Inc. v. Wolfe;
2 counsel, please state your appearance.

3 MR. GIBSON: Jim Gibson with the law firm of Robert L.
4 Powley, P.C. for Defendant Richard Wolfe.

5 MS. RICHARD: Virginia Richard and Lana Marina from
6 Winston & Strawn for Plaintiff Google Inc.

7 THE COURT: Good morning.

8 MS. RICHARD: Good morning, Your Honor.

9 MR. GIBSON: Good morning, Your Honor.

10 THE COURT: Who initiated this request today?

11 MR. GIBSON: I did, Your Honor, Jim Gibson.

12 THE COURT: Okay. Would you like to be heard?

13 MR. GIBSON: I'm sorry, I didn't hear that.

14 THE COURT: Would you like to be heard?

15 MR. GIBSON: Yes, I would, please.

16 THE COURT: Yes.

17 MR. GIBSON: Thank you first, Your Honor, for taking
18 the time to hear us.

19 THE COURT: Sure.

20 MR. GIBSON: The purpose of my letter, Your Honor, is
21 there's a discovery dispute between the parties with respect to
22 Plaintiff producing it's witnesses under our 30(b)(1) notices
23 and discovery deadline -- fact discovery deadline promptly
24 approaching of May 15. And the purpose of my letter was to see
25 if the parties could get on the phone with you to resolve the

1 dispute so that discovery could be completed -- fact discovery
2 could be completed on time.

3 THE COURT: Sure.

4 MR. GIBSON: The basis of the dispute, Your Honor, we
5 served on March 3 three 30(b)(1) notices on the Plaintiff, and
6 you have a copy of the notices with our March 30 letter. But
7 basically we sought to depose and still seek to depose Mr. Paige
8 who is the President and Co-Founder of Google, Inc., as well as
9 two individuals that are, I believe, both Vice Presidents in the
10 product area for Google with respect to their own unique
11 personal knowledge that they might have relating to facts
12 relevant to this case.

13 On March 29, we got an email from opposing counsel
14 indicating that they were not going to produce these individuals
15 because they didn't have any knowledge about Froogle. And --

16 THE COURT: Well, with regard to two of them, Kalamgar
17 (phonetic) -- excuse me if I'm mispronouncing names here -- and
18 Rosenberg; they had disclosed to those individuals as having
19 particular knowledge -- not only knowledge, but particular
20 knowledge within the upper-level of management.

21 MR. GIBSON: I believe they did the same for Mr.
22 Paige, Your Honor.

23 THE COURT: I don't believe they did, but maybe
24 counsel can correct me because I thought I saw a distinction
25 there. I didn't see Paige as one of the individuals, unless I

1 overlooked it in the 26(a)(1) disclosures.

2 MS. RICHARD: Your Honor, if I could just interject
3 here?

4 THE COURT: Sure.

5 MS. RICHARD: With respect to Mr. Kalamgar, Mr.
6 Rosenberg, and Mr. Paige, the representations with respect to
7 all three were that they may have knowledge relating to the
8 launch operations of Froogle Internet prevention. So, all have
9 conditional disclosure. And we have advised --

10 THE COURT: Okay, I don't want to interrupt counsel.
11 I'll give you every opportunity to respond.

12 Mr. Gibson, I stand corrected. I'm just looking for
13 it because I went through this several times, and I still don't
14 see it.

15 MR. GIBSON: I think it's on page 10, Your Honor,
16 paragraph number 25.

17 THE COURT: Your right, your right, okay, thank you.

18 MS. RICHARD: And would you go to Page 9, Your Honor,
19 with respect to Mr. Kalamgar and Mr. Rosenberg that disclosure
20 is identical.

21 THE COURT: Right. I was focusing on which would be
22 limited to a high level senior management perspective.

23 MS. RICHARD: Yes, and that's true of all three.

24 THE COURT: Good. Okay, Mr. Gibson, go ahead.

25 MR. GIBSON: Okay, so, I' guess my first point, Your

1 Honor, is that these folks have been identified in Plaintiff's
2 initial disclosure as people with knowledge. So, I believe at
3 some point in time, they themselves thought they had knowledge.
4 But more importantly, Your Honor, the second point is, this case
5 -- the Plaintiff brought this case alleging trademark
6 infringement by our client Froogle. This case is not just about
7 Froogle. And Plaintiff's attempt to limit these individuals'
8 knowledge with respect to Froogle is improper. These three
9 individuals -- Mr. Paige, being the Founder of Google, certainly
10 had knowledge about their use; they admitted in their judicial
11 disclosures having knowledge -- personal knowledge of Froogle,
12 which is their case. Froogle, Your Honor, is our
13 counterclaimant, and while they maintain that these individuals
14 don't have unique personal knowledge, we're in possession of a
15 document, Your Honor, that clearly indicates all three of these
16 individuals sit on some type of, I'll call it committee for lack
17 of a better word, that this document talks about the
18 implementation and strategy of Froogles product. So, in our
19 opinion, they have unique personal knowledge.

20 THE COURT: That may cut two ways because if that's a
21 committee and there's someone perhaps as Mr. Kalamgar or Mr.
22 Rosenberg who can provide the same information, then that's more
23 of a reason to my way of thinking why you shouldn't do
24 duplicitous discovery.

25 MR. GIBSON: Well, Your Honor --

1 THE COURT: If there's something unique about Mr.
2 Paige, then that's something that you would want to highlight
3 for him.

4 MR. GIBSON: Well, it's difficult to tell, Your Honor,
5 from the document. Fortunately, to the best of our ability we
6 have seen one -- this is an email that talks about minutes of a
7 meeting held on February 27, 2002, which is approximately a
8 couple of weeks before Froogles launch.

9 THE COURT: Okay.

10 MR. GIBSON: And the hint from the email we have, it's
11 pretty clear to us that the people at the meeting are deferring
12 to Mr. Paige --

13 THE COURT: Right.

14 MR. GIBSON: -- for decision-making purposes. Whether
15 there are more minutes of meetings like these, I'm not sure, at
16 least that have been produced.

17 THE COURT: Right. Have you demanded those minutes?

18 MR. GIBSON: Yes, we have.

19 THE COURT: Have they been forthcoming?

20 MR. GIBSON: Well, we only got -- Your Honor, we got
21 this email in the initial request for documents, but only this
22 emails. In our second request for documents, we specifically
23 requested in other missed emails that were otherwise at length
24 discussed. Minutes of what appears to us to be marketing
25 development launch committee meetings for Froogle.

1 THE COURT: Can I hear from the other side now?

2 MS. RICHARD: Yes, Your Honor, we agree with Your
3 Honor's assessment that the 30(b)(1) notices are duplicitous and
4 in addition to that, we have offered that 30(b)(6) witnesses,
5 three witnesses who have instant knowledge of the origin of the
6 Froogle launch, the origin of the Froogle website, development
7 of the website, the implementation of the website, and the
8 marketing and sales of the website, including the trademark
9 counsel who was involved every step of the way in the
10 development of this particular product. And our position really
11 is it's probably in everyone's best interest and the immediate
12 interest of economy to proceed with the 30(b)(6) depositions,
13 learn what the facts are with respect to Froogle and these
14 individuals who also have knowledge with respect to Google, and
15 then if it's absolutely necessary to go to higher management,
16 that would be the time to do that.

17 The depositions of 30(b)(6) witnesses have been
18 scheduled for next week. Mr. Neville Manning (phonetic) who is
19 the senior scientist and a person who has intimate knowledge of
20 the workings of that service is scheduled for Wednesday. And
21 Rose Hayden (phonetic), who is in-house trademark counsel who is
22 involved in the collection of the mark and review of all the
23 materials relating to this domain name and also familiar with
24 this litigation as it has evolved from the opposition pertaining
25 to its present state, is scheduled for next Friday. And Ms.

1 Jaffe (phonetic), who was scheduled for next Friday
2 unfortunately is unable to make that date because counsel for
3 the Defendant failed to adjourn the date with her, but she will
4 be available later in the month of April.

5 And I would note, Your Honor, although the parties did
6 a scheduling order which I'm told that it closes the discovery
7 April 15, the Court actually entered an order which indicates
8 that the close of discovery is October 1. So, this urgency
9 which counsel for the Defendant is relying on in order to
10 further the 30(b)(1) notice really does not exist.

11 THE COURT: Okay, I'll give you freedom to modify that
12 order within the overall envelope that you have, which it looks
13 like -- what is it -- October 30 was the deadline for all
14 discovery? So, it looks like you left about five months for
15 experts, is what you did?

16 MR. GIBSON: Yes, that's our understanding.

17 THE COURT: So, I mean if you want to, you know,
18 submit something and you'd like it in order form, I'd be glad to
19 extend it out. At this point, I'd like it to stay within the
20 envelope. I think I had told you -- and the envelope being the
21 end of October -- I think I told you at the outset that the
22 overall flexibility you have -- if you go back and you look at
23 the first order that you received from me in this case that set
24 up your initial conference, it says on page 2, number 4 that you
25 could go out up to 120 days for good cause shown and then it

1 refers to the standard changing after that to avoidance of the
2 manifested justice. So, you know, as long as you're working on
3 the case, and you certainly are, you could go out -- you have
4 that flexibility of the 120 days. It's rare that an extension
5 is ever granted after that 120 days, but I'm just pointing out
6 to you the overall flexibility you have with regard to the plan
7 that's in place now. So, if you want to agree on extending that
8 fact discovery, you know, until the end of May or whenever,
9 whatever you want to do at this point, within the existing
10 envelope that you have, I'd be glad to sign off on it. So, you
11 have that flexibility.

12 Now, I want to ask you a question because if we can't
13 resolve -- what we're trying to do today is resolve this on a
14 consensual basis. I got a request for a conference and that's
15 always good and we can discuss the issues. But if not, you'll
16 find that there is a procedure, you can check it in your local
17 civil rules. Basically what it comes down to is providing an
18 affidavit that someone has no personal knowledge here, and then
19 one side could ask for an order of protection or the other side
20 can move to compel and you know, and it's resolved that way.
21 And you can do it all in letter form as far as I'm concerned.

22 The point I want to make, however, is what makes this
23 case a little bit different is that the Plaintiff in the
24 26(a)(1) disclosure, that's the automatic discovery, has
25 indicated that all these high level people have unique knowledge

1 that -- have personal knowledge with regard to the case. You
2 usually don't get that when this issue arises. What I would
3 like to suggest to you is -- I assume Mr. Gibson you want to do
4 these depositions that are set up next week?

5 MR. GIBSON: Yes, Your Honor. You're referring to
6 depositions of the Google witnesses?

7 THE COURT: Yes.

8 MR. GIBSON: Yes.

9 THE COURT: What my suggestion would be is add one of
10 these high-level individuals, not Mr. Paige, either or Rosenberg
11 or Kalamgar to what you agree on and see where you stand then.
12 As Plaintiff's counsel has suggested, very often the best way to
13 make a case to do an upper level person is to move up the chain
14 and I don't want to make you do unnecessary depositions with
15 regard to lower level people. But if you feel that there's
16 value in what they've offered on their 30(b)(6)'s then do that,
17 supplement it -- my suggestion would be to supplement it with
18 either Kalamgar or Rosenberg and then see where you are.

19 MR. GIBSON: Okay.

20 THE COURT: I mean if, as you suspect, Rosenberg or
21 Kalamgar you know provides information that leads you to the
22 Plaintiff and you feel that that deposition is essential then
23 you can do your motion to compel or whatever and you know
24 anything you do before that isn't going to prejudice you. If
25 anything, it's going to put you in a better position to know.

1 Maybe after you do one mid-level person, you'll realize that as
2 far as the issues involved in this litigation, it's not
3 necessary to go any further. You're familiar with the case law
4 with regard to you know CEO's and you know this would certainly
5 be someone who shouldn't be unnecessarily deposed.

6 MR. GIBSON: Yes.

7 THE COURT: I don't know; how does the Plaintiff feel
8 about one of -- you know, either Mr. Rosenberg or Mr. Kalamgar,
9 whoever has more knowledge?

10 MR. RICHARD: Your Honor, I think that that's a very
11 fair and reasonable approach, and we will certainly endeavor to
12 get availability dates for both of those individuals, and
13 whichever one is suitable, we'll go forward with the deposition
14 within the timeframe. Or if we have to wait because Your Honor
15 suggested extending the timeframe for depositions, then we'll do
16 that.

17 THE COURT: Okay. Now, I want to bring up one issue
18 because I noticed that there's an issue with regard to where
19 these depositions occur. And it seems to me Google has pulled
20 Wolfe and Froogle in and I don't know why these depositions
21 should not take place within the forum state. That would be the
22 general rule. Now, there may be extenuating circumstances that
23 warrant doing these folks in California, but it wasn't evident
24 from the paper so I just wanted to raise that and get your input
25 on that.

1 MR. GIBSON: Your Honor, I could speak for Defendant.
2 Obviously, we would prefer to do them here.

3 THE COURT: Yes.

4 MR. GIBSON: What Your Honor has not been privy to is
5 there were a number of discussions back and forth with counsel
6 with regard to Mr. Wolfe's deposition; where that deposition
7 would occur. Of course, Mr. Wolfe is here in New York too. And
8 between counsel, we sort of agreed, at least with regard to Mr.
9 Wolfe, that we would have depositions at the offices of
10 Plaintiff's counsel; they videoed the deposition.

11 THE COURT: Right.

12 MR. GIBSON: So, that was my thoughts.

13 THE COURT: And that was in New York?

14 MR. GIBSON: That was in New York, yes. At the time I
15 spoke with counsel, what we were trying to work out was where we
16 would do their witnesses and of course Plaintiff's counsel
17 didn't offer New York, so we tentatively agreed -- I believe,
18 this is correct, but Virginia you could correct me if I'm wrong
19 -- that if and when we got people and dates for Google witnesses
20 they would provide facilities at their offices should they be
21 done in California.

22 THE COURT: I mean if California works; I'm not
23 looking to make issues. For instance, if Wolfe and Froogle had
24 brought -- had sued Google, then under the general rule, you
25 would have to do it at party headquarters unless you agreed

1 otherwise, and that would be out in California. The shoe is on
2 the other foot so, you know, the general rule would seem to be
3 that it occurs in New York.

4 MR. GIBSON: We're in favor of the general rule, Your
5 Honor.

6 THE COURT: I don't want to upset the applecart.

7 MR. GIBSON: Well, one of the other things --

8 THE COURT: It seems to me that was an issue that
9 someone -- I think you had raised it in your papers.

10 MS. RICHARD: Actually, that issue was not raised,
11 Your Honor. At first we had not tentatively agreed but had
12 agreed that the Google deposition would take place in California
13 for the convenience of all involved, which would mean one flight
14 out of California for Mr. Gibson or whoever Plaintiff or
15 Defendants called on versus flying all these people into New
16 York.

17 THE COURT: If that works, you can all agree however
18 you want.

19 MR. GIBSON: Can I just -- that's not my agreement,
20 Virginia. My understanding was you were not going to produce
21 any witnesses unless we went to California. That was my
22 understanding. And if we're going to work out a discovery
23 schedule, a deposition schedule, you know you have two 30(b)(6)
24 people noticed for next week; one in New York, one in
25 California. We've agreed to one in New York, Mr. Neville

1 Manning is in New York, correct?

2 MS. RICHARD: That is correct.

3 MR. GIBSON: And you've offered to produce Rose in
4 California.

5 MS. RICHARD: That is also correct.

6 MR. GIBSON: Okay. That's where we stand right now.
7 I don't know about -- you know if we can agree to depose one of
8 these middle posts and not Mr. Paige to see where that leads us,
9 we need to agree on where that deposition could take place also.

10 I'm not opposed, Your Honor, to taking the deposition
11 -- 30(b)(6) deposition in New York. I'm not opposed to taking a
12 first mid-level person plaintiff. Quite frankly -- well, I'm
13 not too sure I know which one it would be, but in any event, I'm
14 not opposed to meeting them halfway and taking one senior if
15 there's any need to take anyone else --

16 THE COURT: Okay.

17 MR. GIBSON: -- provided we can agree on, I guess,
18 some type of extension required for fact discovery.

19 THE COURT: Any other issues anyone would like to
20 discuss?

21 MR. GIBSON: I think that's it, Your Honor.

22 THE COURT: Okay, if you want to fine tune that and
23 submit it to get it so-ordered, I'd be glad to. If you just
24 want to stipulate to it, that's fine too.

25 MR. GIBSON: Well, I would like to stipulate to it,

1 but I think we're going to have a little discussion as to where
2 depositions are going to be, so I'm not sure we're going to be
3 able to work this out, to be honest, Your Honor.

4 THE COURT: Okay. See what you can do.

5 MR. GIBSON: Okay.

6 THE COURT: Okay. Thank you very much, bye, bye.

7 MR. GIBSON: Thank you, Your Honor.

8 (Whereupon, the proceeding concluded at this time.)

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CERTIFICATION

I, Rochelle Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: April 12, 2006

Signature of Approved Transcriber

Rochelle V. Grant
Typed or Printed Name